

### **REMARKS/ARGUMENTS**

Applicant has carefully reviewed and considered the Office Action mailed on February 9, 2009.

Claims 1, 3-21, and 23-26 are amended, claims 2 and 22 are cancelled, and claim 27 is added; as a result, claims 1, 3-21 and 23-27 are now pending in this application.

Applicant submits that the claims and the claim amendments are presented as they were previously presented in the Amendment and Response filed October 23rd, 2008 since the amendments did not appear to have been entered into record from the Office communication mailed February 9th, 2009.

#### **Election**

Election to one of the following species was required:

**Species A: Claims 1, 3-21 and 23-26, are directed to taking an impression of the auditory canal to make the mold.**

**Species B: Claim 27, is directed to scanning an inner ear directly to make the mold.**

Applicant provisionally elects, with traverse, claims 1, 3-21, and 23-26 of Species A for prosecution. Applicant reserves the right to prosecute the subject matter recited in claims 1, 3-21, and 23-26 in one or more continuation and/or divisional applications.

The Restriction Requirement is traversed on the basis that if the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits. M.P.E.P. § 803. Additionally, the Restriction Requirement and the Election of Species are traversed on the basis that a Restriction Requirement and Election of Species are optional in all cases, per M.P.E.P. § 806.

Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple applications in order to obtain protection for the claimed subject matter. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement and that claims 1, 3-21, and 23-27 remain united for prosecution on the merits.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0123 to facilitate prosecution of this matter.

**CERTIFICATE UNDER 37 CFR §1.8:** The undersigned hereby certifies that this correspondence is being filed electronically with the U.S. Patent and Trademark Office on this 18 day of February, 2009.

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Date: 2/18/09